

CHAPTER 69-05.2-32 IMPROVIDENTLY ISSUED PERMITS

Section

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69-05.2-32-01. Improvidently issued permits - Review procedures. The commission will review any permit it has reason to believe was improvidently issued according to the criteria in this section. The permit was improvidently issued if:

1. Under the violations review criteria of the regulatory program at the time the permit was issued:
 - a. The commission should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or:
 - b. The permit was issued on the presumption that a notice of violation was being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order was subsequently issued;
2. The penalty, violation, or fee:
 - a. Remains unabated or delinquent; and
 - b. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
3. Where the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

History: Effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-32-02. Improvidently issued permits - Remedial measures. In the event of an improvidently issued permit, the commission will employ one or more of the following:

1. Implement, with the cooperation of the permittee or person responsible, and the responsible agency, a plan for abating the violation or a schedule for paying the penalty or fee.
2. Impose a permit condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee.
3. Suspend the permit until the violation is abated or the penalty or fee is paid.
4. Rescind the permit according to section 69-05.2-32-03.

History: Effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-32-03. Improvidently issued permits - Recission procedures.

The commission will serve on the permittee a notice of proposed suspension and recission which includes the reasons for finding that the permit was improvidently issued. The notice will also state that:

1. The permit will automatically be suspended after a specified period of time not to exceed ninety days, and will be rescinded after an additional period of time not to exceed ninety days, unless within those periods the permittee submits proof and the commission finds that:
 - a. The commission finding under section 69-05.2-32-01 was erroneous;
 - b. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee to the satisfaction of the responsible agency;
 - c. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
 - d. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee.
2. After permit suspension or recission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other necessary environmental protection measures.

3. The permittee may file an appeal for administrative review of the notice under North Dakota Century Code section 38-14.1-30.

History: Effective January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

